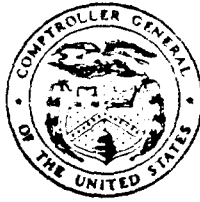


DECISION

**THE COMPTROLLER GENERAL
OF THE UNITED STATES**
WASHINGTON, D.C. 20548

FILE: B-208927

DATE: November 1, 1982

MATTER OF: Ferguson-Williams, Inc.; Mark Dunning
Industries, Inc.

DIGEST:

1. Protest against alleged improprieties which are apparent on the face of a solicitation must be filed prior to bid opening.
2. Where protest against alleged specification defects is initially filed with the contracting agency prior to bid opening, the opening of bids without responding to the protest constitutes initial adverse agency action. Subsequent protest to GAO must be filed within 10 working days thereafter.

Ferguson-Williams, Inc. (Ferguson), and Mark Dunning Industries, Inc. (Dunning), protest the award of any contract under solicitation No. DAKF23-82-B-0109, issued by the Army for maintenance and repair services at Fort Campbell, Kentucky. Ferguson bid as the prime contractor, with Dunning as its subcontractor. Both protesters assert that the scope of work under the solicitation was ambiguous, that the Army failed to respond to Dunning's letters requesting clarification prior to bid opening, and that because of the Army's failure to clarify, the Ferguson bid was substantially higher than it would otherwise have been because the bid was based on the broadest possible interpretation of the scope of work required under the contract.

We dismiss the protest as untimely.

Our Bid Protest Procedures, 4 C.F.R. § 21.2(b)(1) (1982), require that protests (to either a contracting agency or our Office) based upon alleged improprieties in a solicitation apparent prior to bid opening be filed prior to bid opening. King-Fisher Company, B-205003, June 16, 1982, 82-1 CPD 592. The bases of protest raised here regarding the ambiguities in the

scope of work were apparent from the face of the solicitation, as evidenced by three letters sent by Dunning to the contracting officer before bid opening which detailed the alleged ambiguities and requested clarification. Bid opening occurred on August 4, 1982. Ferguson's initial protest to the Army was dated August 19, 1982, and its protest to our Office was filed (received) on September 7, 1982; Dunning's protest to our Office was filed on September 7, 1982. Since Ferguson's first protest was filed after bid opening, it is clearly untimely.

While Dunning's earlier letters to the Army merely ask for clarification and do not appear to convey any intent to protest, even if we consider these letters to be protests, the subsequent protest to our Office is untimely. Our Bid Protest Procedures, 4 C.F.R. § 21.2(a), require that when a protest is initially timely filed with a contracting agency, any subsequent protest to our Office must be filed within 10 working days of actual or constructive knowledge of adverse agency action. The fact that bid opening occurred without Dunning receiving the requested clarification is constructive notice of adverse agency action. Bernard Franklin Company, B-207126, August 3, 1981, 82-1 CPD 414. Here, Dunning's protest was untimely filed in our Office more than 10 working days after bid opening.

Harry R. Van Cleve
Harry R. Van Cleve
Acting General Counsel